

STATE OF VERMONT
HUMAN SERVICES BOARD

In re)	Fair Hearing No. 17,766
)	
Appeal of)	
)	

INTRODUCTION

The petitioner appeals a decision by the Department of Prevention, Assistance, Transition, and Health Access (PATH) denying him coverage for orthodonture through the Medicaid program.

FINDINGS OF FACT

1. The petitioner is a fifteen-year-old boy who is under the care of an orthodontist who has worked in this field for almost thirty years. On April 3, 2002, the boy's orthodontist submitted a request for coverage of comprehensive orthodontic care to PATH. He did so on a form provided by PATH which required him to check off if the boy had certain dental malocclusions. The form says that if one major or two minor criteria on the listings are met, the condition will be considered severe enough for treatment.

2. The treating orthodontist checked the box that said "blocked cuspids, per arch (deficient by at least one third of needed space)", the box that said "traumatic deep bite

impinging on palate" and "Overjet (10+ mm measured from labia to labia)".

3. PATH considered the request but found upon a review of the records that the cuspids are blocked by only one fourth of the needed space; the bite, although deep, does not impinge upon the palate; and, that the overjet is only 5 mm. PATH denied the request as not meeting any criteria and therefore not being sufficiently severe to require treatment.

4. The petitioner's orthodontist who has seen him about twelve times over the last five years, disagrees with this assessment. He says that fourteen teeth in the petitioner's upper dentition are completely deviated a half a tooth to the right making the cuspids hit each other instead of going into the appropriate valleys. He would term this problem "skeletal facial asymmetry" which he classifies as a cranio-facial anomaly. (The orthodontist has been a cranio-facial consultant to the Dartmouth clinics for twenty-seven years). This condition has, in his opinion, created no cuspid guidance and puts the petitioner at risk for a number of problems including temporomandibular joint dysfunction (TMJ). He agrees that the petitioner's cuspids are only partly blocked due to this phenomenon but describes this condition as serious as completely blocked out cuspids. This condition was not

reported on the original request because it was not contained in the listings on the form. He agrees the deep bite does not impinge on the child's palate but says at 6 mm it is significant and in combination with the lack of cuspid guidance, crowding, skeletal asymmetry, and a significant 5 mm overbite, creates a malocclusion as bad as the posterior overbite described in the listings. It was the treating orthodontist's opinion that this combination of problems would cause significant functional and oral health maintenance problems (possible TMJ, gum disease, discomfort, and chewing dysfunction) for the petitioner in the future if not corrected.

5. A dentist reviewed this information for PATH and concluded that the petitioner did not meet any of the values listed in the criteria adopted by PATH for orthodonture coverage, that is, his deep bite does not impinge on his palate, his overjet is 5, not 10, mm and that his cranio-facial musculature seemed normal. Other observations which were in handwriting are not legible. His opinion was that these conditions did not meet those described in the listings. He offered no opinion as to whether the combination of these several impairments equaled the severity of any two of the listings in combination.

6. The petitioner's models, records and X-ray photographs were also reviewed by an expert orthodontist of equal credentials and experience to the treating orthodontist. It was his opinion that the petitioner has one cuspid blocked by 1/4, not two blocked by 1/3, of the space needed. He also observed that the overbite is deep but does not impinge on the palate. He agrees with the treating physician that the overjet is 5 mm. His assessment is that not one of these conditions is as severe as any listed condition. He does not believe that TMJ is a significant risk based on these conditions alone but develops based on other factors. He does not see any evidence for a severe cranio-facial anomaly, but he does not define that term and did not comment on the treating orthodontist's diagnosis of skeletal asymmetry in terms of impact on the child's ability to function. He says that this petitioner is not as severe as a child who fully meets three criteria: 2 blocked cuspids of 1/3 space or more, 10 mm of overjet and an overbite which impinges upon the palate. The orthodontist's contention that children with larger measurements of any particular listed malocclusion are in a more serious situation than children with a lesser measurements is found to be credible. His opinion that a child who actually meets all three criteria mentioned on the

initial request is worse off than a child who has the same three conditions to a lesser degree of severity is credible. However, that opinion begs the essential question as to whether a child with a number of malocclusions, including some not even described in the listings, is in an equally severe situation as a child with one major or two minor criteria from the listings. The orthodontist did not offer an opinion on that subject. He offered his opinion that the petitioner does not have a "handicapping malocclusion" but he did not define what he meant by that term.

7. Because the treating orthodontist has had an opportunity to see the child on several occasions and offered a well-supported opinion on the severity of all of the child's malocclusions in combination versus the severity of any two contained in the listings, his opinion that the petitioner's condition is as severe as any two of the minor listings is found as fact herein.

ORDER

The decision of PATH is reversed.

REASONS

PATH says that it will only cover a child for orthodontic treatment under the Medicaid program if he has a "handicapping

malocclusion". As the Board has found in a prior set of cases on this issue, the statutes and regulations require PATH to make an individual assessment of whether each child's dental condition is sufficiently severe considering all of his impairments, not just those listed on PATH's form. Fair Hearing No. 17,070 et al. PATH has not defined "handicapping malocclusion" except with reference to the criteria requiring that one major or two minor criteria be met. As the Board said in its prior opinion, if a petitioner can show that his condition is as severe as one major or two minor criteria listed by PATH, he has met the definition for "handicapping malocclusion". The petitioner has made such a showing in this case. The Board's prior decision is attached hereto as the basis for this decision. All facts found in that decision relating to the operation of the program by PATH are also incorporated herein by reference.

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